IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1102 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

TATA CHEMICALS LTD.

Appearance:

1. Criminal Appeal No. 1102 of 1994

MR. PANDYA, ADDL. PUBLIC PROSECUTOR for Petitioner No. 1

MR TEJAS BAROT for M/S TRIVEDI & GUPTA for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/12/2002

ORAL JUDGEMENT

1. The State has preferred this appeal against

judgment and order recorded by learned Judicial Magistrate, First Class, Dwarka, in Criminal Case No.549 of 1993 on September 24, 1994. Respondents came to be acquitted by the learned Judicial Magistrate, First Class, of the charge under Section 3(1) of the Industrial Disputes Act, 1947.

2. The brief facts of the case are that, respondent No.1 is a public limited company functioning at Mithapur and respondents No.2 and 3 are President and Vice-President, HRD and Administration of respondent No.1. The accusation against the respondents is that they had not complied with the requirement of Section 3(1) of the Industrial Disputes Act, namely, constituting a Works Committee and, thereby, being subjected to punishment under sub-section (2) of Section 31 of the Industrial Disputes Act. It was charged that the respondents had dismantled the Works Committee from the 12th March, 1990, which was functioning till then.

2.1 The version that was given by the respondents was that the number of employees in the establishment exceeded 500 and therefore by virtue of introduction of Section 3A of the Industrial Disputes Act in Gujarat, they had constituted Joint Management Council and it was functioning since 12.3.1990 and from that date onwards because of constitution of the Joint Management Council, the Works Committee was dismantled and the functions of the Works Committee were to be performed by the Joint Management Council besides the other functions as enumerated in Section 3B of the Industrial Disputes Act. The respondents also took up a plea of the complaint being time barred.

3. The Trial Court recorded acquittal on the ground that a Joint Management Council, as envisaged under Section 3-A of the Industrial Disputes Act, was constituted and was functioning pursuant to the notification dated the 26th February, 1988 and the Works Committee was disbanded only thereafter. The learned Magistrate also observed that both Works Committee and Joint Management Council have similar functions, which overlap each other and, therefore, both are not required to operate because the Joint Management Council is required to be constituted in establishments having more than 500 employees whereas Works Committee is required to be constituted in establishments having more than 100 employees. The respondents having constituted a Joint Managing Council, Works Committee was not required to be continued. The learned Trial Magistrate also observed that, in any event, the complaint was time barred as it

came to be filed in 1993 by the Government Labour Officer. The learned Magistrate also observed that the whole action was initiated at the behest of a person who was neither an employer nor an employee and, therefore, the complaint cannot be said to be in respect of an industrial dispute and, therefore, would not be tenable.

4. Aggrieved by the said observations of the learned Judicial Magistrate, First Class, while recording acquittal, the State has preferred this appeal.

5. The learned Additional Public Prosecutor, Mr. Pandya, has assailed the judgment and order on the ground that the requirement of Joint Management Council is for establishments having more than 500 employees. Section 3-A of the Industrial Disputes Act, as applicable to State of Gujarat, nowhere envisages dismantling of the Works Committee. He submitted that it is true that the company has more than 500 employees, it is also true that the State of Gujarat has, by amendment Act, introduced Section 3A and Section 3B requiring such establishments to constitute Joint Management Council, but that does not absolve the management of such establishments from the responsibility cast on them under Section 3, sub-section (1) of the Industrial Disputes Act and therefore, Works Committee was also required to be continued by respondents. Discontinuance of Works Committee has resulted into non-compliance/violation of provision contained in Section 3, sub-section (1) of the Industrial Disputes Act. The Trial Court was, therefore, in error in recording acquittal. Mr. Pandya also submitted that the learned Magistrate also committed an error in holding that the complaint was time barred. According to him the offence would be a continuing offence as long as the Works Committee is not constituted and therefore there is no question of application of Section 468 of Cr.P.C. Mr. Pandya, therefore, submitted that the appeal may be allowed.

6. Learned Advocate, Mr. Tejas Barot, appearing for Messrs Trivedi and Gupta for the respondents submitted that the functions of the Works Committee and the Joint Management Council are similar. Only the size of Joint Management Council is larger, where employees have a better representation. Mr. Barot submitted that the Joint Management Council is nothing but a magnified version of the Works Committee, which is introduced by the statute for larger institutions. The respondents had implemented the requirement of Section 3-A by constituting a Joint Management Council. The employees perhaps have a better representation in the management.

There was no question of flouting the order. In fact, both the Committees, if they operate simultaneously, may lead to conflicting decisions and consequent unrest. The purpose behind formation of committees will be frustrated. Besides this, there is no complaint from any employee or any union of the employees. Mr. Barot submitted that there is no requirement indicated either in the amendment or in the Rules nor is there any Notification, GR or Circular which requires that any establishments having more than 500 employees there has to be a Works Committee as well besides a Joint Management Council. According to Mr. Barot the scope of area of operation of a Works Committee is much narrower than that of a Joint Management Council. The respondents had no mens-rea in discontinuing with the Works Committee because when the Joint Management Council was formed it has been been notified that functions of the Works Committee shall also be performed by the Joint Management Council. Mr. Barot therefore submitted that in the first instance there is no violation of Section 3 as there is no provision which requires that there has to be a Works Committee besides Joint Management Council. Mr. Barot submitted that even if it is presumed that there is non-compliance of Section 3 of the Industrial Disputes Act, there was no mens-rea behind it. Lastly, Mr. Barot submitted that, above all, the complaint would be time barred as it is filed in 1998, whereas Section 468 of the Code of Criminal Procedure provides that where only fine is prescribed, the complaint has to be filed within six months. According to him, Works Committee was in existence and it was dissolved in 1990. So once it is dissolved that can be considered as an offence but that cannot be considered as a continuing offence for all times to come and no error can be said to have been committed by the trial Court. Mr. Barot, therefore, submitted that the appeal may be dismissed.

7. Having regard to rival side contentions it would be appropriate to record at this stage that this Court is considering an acquittal appeal. Having gone through the record and proceedings, the fact remains undisputed that Works Committee was functioning till Joint Management Council was constituted and since constitution of Joint Management Council, it continued to function. No complaint is filed or action is initiated by any of the employees or Union of employees so far as non-functioning of Works Committee is concerned. The trial Court has taken a view that where the legislature has introduced Section 3A for larger institutions having more than 500 employees, which requires the employer to constitute a Joint Management Council and where the legislature has

specified the areas of operation of Joint Management Council by enacting Section 3B with a wider scope of area of operation, no offence can be said to have been committed by the respondents. It would be appropriate, at this stage, to consider the provisions contained in Section 3A and Section 3B of the Industrial Disputes Act, which run as under :-

"3-A. - Joint Management Council. (1) If in respect of any industrial dispute in which appropriate Government is the State Government, the State Government is of opinion that it is desirable in public interest to take action under this section, it may, in the case of all industrial establishments or any class of industrial establishments in such industry, in which five hundred or more workmen are employed or have been employed on any day in the preceding twelve months, by general or special order, require the employer to constitute in the prescribed manner and within the prescribed time limit a Joint Management Council consisting of such number of members as may be prescribed, comprised of representatives of employers and workmen engaged in the establishment, so however that the number of representatives of workmen on the council shall not be less than the number of representatives of the employers. The representatives of the workmen on the council shall be elected in the prescribed manner by the workmen engaged in the establishment from amongst themselves:

Provided that a list of industries in respect of which no order is issued under this sub-section shall be laid by the State Government before the State Legislature within thirty days from the commencement of its first session of each year.

(2) One of the members of the Council shall be appointed as Chairman in accordance with rules made in this behalf.

"3-B. Functions of the Council.- (1) The Council shall be charged with the general duty to promote and assist in the management of the Industrial establishment in a more efficient, orderly and economical manner, and for that purpose and without prejudice to the generality of the foregoing provision, it shall be the duty of the council --

(a) to promote cordial relations between the employer and employees;

(b) to build up understanding and trust, between them;

(c) to promote measures which led to substantial increase in productivity;

(d) to secure better administration of welfare measures and adequate safety measures;

(e) to train the employees in understanding the responsibilities of management of the undertaking and in sharing such responsibilities to the extent considered feasible; and

(f) to do such other things as may be prescribed.

(2) The council shall be consulted by the employer on all matters relating to the management of the Industrial establishment specified in sub-section (1) and it shall be the duty of the council to advise the employer on any matter so referred to it.

(3) The council shall be entrusted by the employer with such administrative functions appearing to be connected with, or relevant to, the discharge by the council of its duties under this section as may be prescribed.

(4) It shall be the employer to furnish to the council necessary information relating to such matters as may be prescribed for the purpose of enabling it to discharge its duties under this Act.

(5) The council shall follow such procedure in the discharge of its duties as may be prescribed.

8. A bare reading of the above provisions would make it clear that a Joint Management Council has a larger area of operation and is invested with more powers than a Works Committee. Besides this when the Joint Management Council was constituted on 12.3.1990 and Works Committee

was dissolved on that day, it has been notified by the respondents that all the activities of Works Committee would be carried out by the Joint Management Council. Therefore it cannot be said that there was any ulterior motive or any mensrea present in the minds of the respondents while dissolving the Works Committee. It is also to be noted that there is no Notification, GR or Circular requiring continuation of a Works Committee even after formation of a Joint Management Council. In this set of facts, the view taken by the trial Court cannot be considered as an impossible view and therefore, this Court is not inclined to interfere with the judgement and order impugned herein.

9. It would also be appropriate to clarify that this Court does not lay down a proposition that Works Committee is not required to be constituted or continued where Joint Management Council is constituted. It is also clarified that this Court expresses no opinion on the question whether non-constitution of Works Committee would be a continuing offence or not. It is only on set of facts emerging on record of this case that this Court refrains from interfering with the judgement and order of acquittal recorded by the trial Magistrate. The appeal therefore must fail and is dismissed.

(A.L.Dave,J.)

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